No. 1745.

IN THE

United States Circuit Court of Appeals

NINTH CIRCUIT

EXPLORATION MERCANTILE COMPANY, a Corporation,

Plaintiff in Error,

vs.

PACIFIC HARDWARE AND STEEL COMPANY, a Corporation, THE GIANT POWDER COMPANY, CONSOLIDATED, a Corporation, and J. A. FOLGER AND COMPANY, a Corporation, Petitioning Creditors.

Defendants in Error.

REPLY TO PETITION FOR REHEARING

J. L. KENNEDY,
Attorney for Defendants in Error.

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REPLY TO PETITION FOR REHEARING.

The defendants in error respectfully submit the following in reply to the petition for rehearing of plaintiff in error.

I.

The full faith and credit clause of the Constitution of the United States, Article IV, Section 1, is of no greater force than is Article I, Section 8, Subdivision 4, and the Courts have uniformly held that the bankruptcy courts have exclusive jurisdiction.

Brief of defendants in error herein, pages 12, 13 and 14.

The State Court did not have jurisdiction.

Golden vs. Averill, 101 Pac. 1201.

II.

The decision is in harmony with judicial decisions elsewhere.

> "If the company, while insolvent, had voluntarily brought an action to wind up its affairs for the benefit of its creditors, and had applied for the appointment of receivers to take charge of its property, the superior right of the bankruptcy court could not safely be questioned."
>
> In re Edward Ellsworth Co., 173 Fed. 699.

See also

Matter of Milbury Co., 11 Amer. B. R. 523.

III.

The amended petition alleges that the initial application to the State Court was the act and deed of the corporation. It therefore requires no supposed evidence or excerpts of the lower court to support it.

IV.

Attention is called to the opinion of the lower court as a better statement of the facts of this case than those in the petition intended to support the argument with reference "to the serious results of this decision."

Trans., pp. 46-53 inclusive.

The request

> "If doubts exist in the minds of this Honorable Court, as to the true meaning and construction, of

> that part of the bankrupt law, relating to 'being insolvent, applied for the appointment of a receiver, etc.,' that it certify the question to the Supreme Court of the United States, that we may have a settled interpretation, for the future guidance of all Courts and litigants",

is made too late. If such right is claimed it should be called to the attention of the Court in advance of decision.

> Rule XXXVI, Subd. 3, General Orders in Bankruptcy;
> Knapp vs. Milwaukee Trust Co., 20 Amer. B. R. 671, 673, 162 Fed. 675, 677.

Furthermore, the language of the Bankruptcy Act is too plain to require further settlement. "Being insolvent " applied for the appointment of a receiver" can only require two essentials, first, the insolvency of the bankrupt, second, application for the appointment of a receiver upon any ground whatsoever.

It is therefore respectfully submitted that the petition for rehearing should be denied.

J. L. KENNEDY,

Attorney and Solicitor for Defendants in Error.